

TESTIMONY OF MICHEAL R. LOHMEIER

May 4, 2016

Background of Micheal R. Lohmeier

Mr. Lohmeier currently serves as City Assessor for the City of Auburn Hills (circa 2010 to Present). Prior to being the city's assessor he served in both public and private appraisal capacities including serving as a Tribunal Member at the Michigan Tax Tribunal.

Mr. Lohmeier is certified by the Michigan State Tax Commission as a Michigan Master Assessing Officer(4), formerly known as a *Level 4 Assessing Officer* which is the highest level of Assessor certification. Mr. Lohmeier is licensed by the Department of Licensing and Regulatory Affairs as a Certified General Real Estate Appraiser Licensee, the highest license level for appraisers. Mr. Lohmeier holds several of the highest designations in the valuation profession including:

- MAI and SRA designation of the Appraisal Institute.
- FASA and two ASA designations of the American Society of Appraisers.
- He has served in other leadership roles in appraisal and assessing including writing and teaching a number of seminars and classes for appraisal and assessment organizations as well as at local colleges/universities.

Mr. Lohmeier is one of the contributing authors of *The Appraisal of Real Estate*, 14th Ed., published by the Appraisal Institute. Mr. Lohmeier has authored and written dozens of articles, texts, seminars and classes for appraisal and assessment organizations including the Appraisal Institute, Michigan Realtors®, American Society of Appraisers, Equipment Appraisers Association of North America, State Tax Commission and many others. Mr. Lohmeier has served in dozens of local and national leadership roles in appraisal and assessment organizations including past-Presidents of the Great Lakes Chapter Appraisal Institute, Detroit Chapter American Society of Appraisers, and Oakland County Association of Assessing Officers.

Summary

In January 2012, Mr. Lohmeier testified before the Michigan Tax Tribunal in the case of *Target Corporation v City of Auburn Hills*, which involved his appraisal of a Target "big box" store for tax years 2009 through 2011. The Michigan Tax Tribunal ruled, as it has in virtually all other cases it has tried regarding "big box" stores, against the City and held "big box" stores must be valued as "vacant and available," utilizing the so-called "dark store" theory.

Abandonment of the **dark store** method of valuing "big box" stores would be in compliance with Michigan's "true cash value" (i.e., fair market value) definition as contained in the Michigan General Property Tax Act at MCL 211.27.

- Defined as "the usual selling price at the place where the property to which the term is applied is at the time of the assessment, being the price that could be obtained for the property at a private sale and not at auction sale except as otherwise provided in this section, or at a forced sale." Put simply, a property's true cash value is to be established based on "an arm's length transaction."
- Valuing a functional and operational "big box" store by **hypothetically** assuming it is vacant and available using sale transactions that are dark stores is not valuing the property at its usual selling price where the store is located.
- MCL 211.27 requires the assessor "shall also consider the advantages and disadvantages of location ... zoning, existing use and present economic income of structures ..." Assuming and valuing a functional and operating "big box" store as vacant and available and by utilizing dark store sale transactions does not take into consideration the advantages of location, the existing use of the operating and occupied "big box" store and/or the present economic income of the building.
- Dark "big box" stores are often purchased and then occupied for second-generation, or second-tier uses, such as churches, recreational facilities, warehouse and other less intensive uses. They are rarely occupied by a different "big box" user because the seller **almost always places deed restrictions** on their stores, prohibiting

them from any similar use. This deed restriction has often been a significantly negative influence on the sale price of the property when it's highest and best use is to continue its present use. Assuming the dark store method assumes there is no first generation market and properties should be appraised starting only at a second generation, which ignores the value of examining a properties highest and best use. And it assumes the property is vacant and available.

- The deed restrictions and/or restrictive covenants on "big box" stores prohibit other "big box" stores from continuing the operations and/or occupying the abandoned properties by the sellers' actions, creating an artificial market of the properties by lowering the prices for the dark stores. The lower prices reflect the severely limited uses of the properties and in turn are attractive to only a narrow and limited number of potential users.
- A dark deed restricted "big box" store sale which prohibits future "big box" use is not a proper comparison (i.e., comparable) to an unrestricted and operational "big box" store.
- A property's highest and best use drives the comparability decisions for comparisons between a property and potential comparable sales. When the highest and best use of a functional and operating "big box" store is its continued use, it is improper to compare it to a deed restricted "big box" store representing an inferior marketplace and therefore has a different highest and best use as the operating "big box" store.

When an assessment is contested, both parties need to conduct relevant research and perform proper analysis to reach credible valuations. Michigan requires all real estate appraisals be prepared in accordance with its appraisal license laws including the Uniform Standards of Professional Appraisal Practice. True cash valuations require the appraiser to determine the market the property is competing in as well as the highest and best use of the property as vacant land and as presently improved. Highest and best use involves a four part examination including studying alternative uses by testing:

1. Physical possibility
2. Legally permissibility
3. Financially feasibility
4. Maximally produce use

The appraiser's highest and best use as vacant and as improved is critical in determining the valuation method(s) which are relevant and need to be applied. It also shapes the degrees of comparability of any transactions used for comparison (i.e., comparable sales.). The three approaches to value used by appraisers include:

1. Cost-less-depreciation
2. Sales comparison approach
3. Capitalization of income

Comparable sale transactions are used in all three approaches to value.

Sound valuation reports are necessary in order for the Michigan Tax Tribunal to render reliable decisions. Determining the proper market a property competes in, a property's highest and best use and the application of relevant approaches to value is a paradigm of proper valuation processes. This process is commonly referred to as the *appraisal process*.